

Doc. # 3582
ADOPTED

JUNE 24, 1993

MEMORANDUM

TO: BOSTON REDEVELOPMENT AUTHORITY BOARD and
PAUL BARRETT, DIRECTOR

FROM: BRIAN DE LOREY, ASSISTANT DIRECTOR
ECONOMIC DEVELOPMENT
KEVIN MORRISON, DEPUTY GENERAL COUNSEL

SUBJECT: DEVONSHIRE TOWERS CHAPTER 121A PROJECT
SECOND AMENDMENT TO REPORT AND DECISION

EXECUTIVE

SUMMARY: Requests adoption of the Second Amendment to the Report and Decision on the Devonshire Towers Chapter 121A Project (the "Project") approving a take-out restaurant use and granting a zoning deviation for such use.

On November 1, 1979, the Boston Redevelopment Authority (the "BRA") voted to adopt a Report and Decision (the "Report and Decision") on the Application of Devonshire Towers Trust for approval of an Urban Redevelopment Project pursuant to Massachusetts General Laws Chapter 121A and Chapter 652 of the Acts of 1960, both as amended (collectively "Chapter 121A"). The Report and Decision was approved by the Mayor on May 1, 1980 and filed with the City Clerk on May 2, 1980. The Project consists of a 41 story apartment and office complex with 478 residential apartments on 32 floors, approximately 92,000 square feet of office space on 5 floors, approximately 10,000 square feet of rental area along with a public pedestrian passageway connecting Washington and Devonshire Streets on the ground level, and three levels of below grade parking for approximately 242 vehicles.

On March 7, 1985, the BRA adopted a First Amendment to the Report and Decision. This amendment allowed for the construction and use of a three level building addition within the existing open off-street loading area between Washington and Devonshire Streets. The First Amendment was approved by the Mayor on June 5, 1985 and filed with the City Clerk on June 6, 1985.

As of June 23, 1993, an application for a Second Amendment to the Report and Decision (the "Application") was submitted on behalf of Devonshire Tower Trust. The Application requests approval of a change in use in the Project by replacing an existing automatic bank teller facility with a take-out restaurant serving coffee and bakery products to be operated by the Coffee Connection. A take-out restaurant is a conditional use under Article 8-7, Table A, Use Item 36A, of the Boston Zoning Code and thus a conditional use permit is required. Since the Project is governed by Chapter 121A, the BRA, with the approval of the Mayor, has the exclusive power to

grant zoning relief. The BRA may approve the use and grant a "zoning deviation" to eliminate the conditional use permit requirement. The plans for this restaurant have been submitted to and approved by the Design Review staff. The staff has also determined that the restaurant will be accessible. A copy of the Application is enclosed.

A requirement has been incorporated into the Second Amendment authorizing the Director to impose terms and conditions to prevent littering and to minimize the impact on pedestrian and traffic flow on Washington Street.

The Project originally had a fifteen year term. The Chapter 121A status, subject to an appropriate certificate being issued by the BRA, will terminate on or about May 2, 1995. The Project's owner will be required to make a payment in-lieu of tax covering the period from the date of project termination until the property becomes taxable.

In the opinion of the Office of Chief General Counsel, this Second Amendment does not represent a "fundamental change" and thus does not require a public hearing. It is therefore recommended that the Authority adopt the attached Second Amendment to the Report and Decision.

An appropriate vote follows:

VOTED: That the document presented at this meeting entitled "SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF DEVONSHIRE TOWERS TRUST FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A AND CHAPTER 652 OF THE ACTS OF 1960, BOTH AS AMENDED ("CHAPTER 121A"), TO BE UNDERTAKEN AND CARRIED OUT BY A TRUST ORGANIZED PURSUANT TO MASSACHUSETTS GENERAL LAWS AND APPROVAL TO ACT AS AN URBAN REDEVELOPMENT TRUST UNDER SAID CHAPTER 121A", be and hereby is approved and adopted.

**Boston
Redevelopment
Authority**

Raymond L. Flynn, *Mayor*

Clarence J. Jones, *Chairman*

Paul L. Barrett, *Director*

July 12, 1993

Mr. Patrick F. McDonough
City Clerk
Room 601, City Hall
Boston MA 02201

SUBJECT: DEVONSHIRE TOWERS CHAPTER 121A PROJECT
SECOND AMENDMENT TO REPORT AND DECISION

Dear Mr. McDonough:

Pursuant to Section 13, Chapter 652 of the Acts of 1960, I hereby file with the Office of the City Clerk the following material attested by the undersigned as Secretary:

A Certificate of the Vote of the Authority adopted on June 24, 1993, approving and adopting the "BOSTON REDEVELOPMENT AUTHORITY SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF DEVONSHIRE TOWERS TRUST FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A AND CHAPTER 652 OF THE ACTS OF 1960, BOTH AS AMENDED ("CHAPTER 121A"), TO BE UNDERTAKEN AND CARRIED OUT BY A TRUST ORGANIZED PURSUANT TO MASSACHUSETTS GENERAL LAWS, AND APPROVAL TO ACT AS AN URBAN REDEVELOPMENT TRUST UNDER SAID CHAPTER 121A."

An executed copy of the Approval by His Honor, Mayor Flynn, dated July 6, 1993, of the foregoing vote.

Attached to the above-mentioned Certificate of Vote and Approval thereof by His Honor, Mayor Flynn, is a copy of the aforementioned "...SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF DEVONSHIRE TOWERS TRUST ...".

Boston
Redevelopment
Authority

Raymond L. Flynn, Mayor
City Hall
Boston, Massachusetts

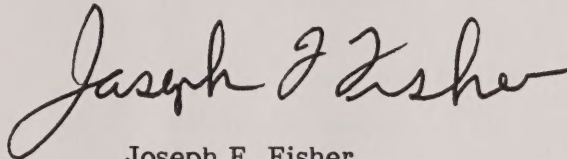
Mr. Patrick F. McDonough

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July 12, 1993

Please acknowledge the filing of the foregoing on the xerox copy of the letter and return the same to the undersigned.

Very truly yours,

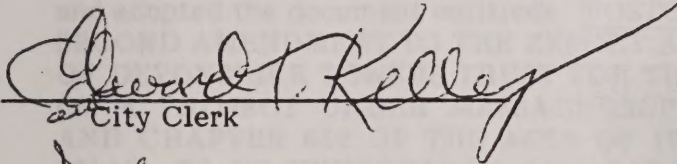
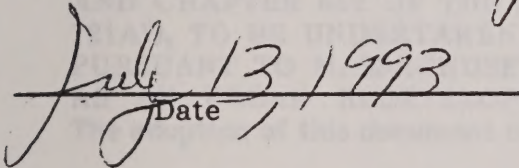


Joseph F. Fisher
Executive Director

Honorable Raymond L. Flynn
Mayor of Boston
City Hall
Boston, Massachusetts

SUBJECT: DEVONSHIRE TOWERS TRUST ACT, CHAPTER 121A, SECTION 12A
SECOND AMENDMENT TO BACRYLAND DECISION

Receipt of the aforementioned
is hereby acknowledged:


City Clerk
Date

Enclosed herewith for your review are four copies of the "SECOND AMENDMENT TO THE DEVONSHIRE TOWERS TRUST ACT", together with all attachments. Attached to each copy of the Amendment is a Certificate of Filing executed by the undersigned as Secretary.

Section 12 of Chapter 121A of the Acts of 1980 provides as follows: "... provided, however, that no vote of the authority approving a project or any change therein, or making or amending any rule, regulation or standard decision, shall be in force until approved by the Mayor of said City." Your approval pursuant to section 12 is respectfully requested.

The Approval Form which is attached to each of the aforementioned documents is in the form previously approved by the City of Boston Law Department.

Boston Redevelopment Authority

Raymond L. Flynn, *Mayor*

Clarence J. Jones, *Chairman*

Paul L. Barrett, *Director*

July 1, 1993

Honorable Raymond L. Flynn
Mayor of Boston
City Hall
Boston, Massachusetts

SUBJECT: DEVONSHIRE TOWERS CHAPTER 121A PROJECT
 SECOND AMENDMENT TO REPORT AND DECISION

Dear Mayor Flynn:

At the regular meeting of June 24, 1993, the Authority approved and adopted the document entitled: "BOSTON REDEVELOPMENT AUTHORITY SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF DEVONSHIRE TOWERS TRUST FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A AND CHAPTER 652 OF THE ACTS OF 1960, BOTH AS AMENDED ("CHAPTER 121A"), TO BE UNDERTAKEN AND CARRIED OUT BY A TRUST ORGANIZED PURSUANT TO MASSACHUSETTS GENERAL LAWS, AND APPROVAL TO ACT AS AN URBAN REDEVELOPMENT TRUST UNDER SAID CHAPTER 121A." The adoption of this document constitutes approval by the Authority.

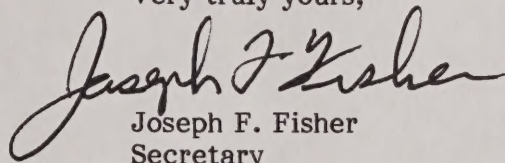
Enclosed herewith for your review are four copies of the "SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF DEVONSHIRE TOWERS TRUST ... ", together with all attachments. Attached to each copy of the Amendment is a Certificate of Vote executed by the undersigned as Secretary.

Section 12 of Chapter 652 of the Acts of 1960 provides as follows: "... provided, however, that no vote of the Authority approving a project or any change therein, or making or amending any rule, regulation or standard therefor, shall be in force until approved by the Mayor of said City." Your approval pursuant to Section 12 is respectfully requested.

The Approval Form which is attached to each set of the aforementioned documents is in the form previously approved by the City of Boston Law Department.

If the vote of the Authority approving the "SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF DEVONSHIRE TOWERS TRUST ..." meets with your approval, please sign all four copies of the Approval Certificate, one copy of which I am required as Secretary to file with the City Clerk pursuant to Chapter 652 of the Acts of 1960.

Very truly yours,

A handwritten signature in cursive script, reading "Joseph F. Fisher".

Joseph F. Fisher
Secretary

JFF:TG
Attachments

CERTIFICATE OF VOTE

The undersigned hereby certifies as follows:

(1) That he is the duly qualified Secretary of the Boston Redevelopment Authority, hereinafter called the Authority, and the keeper of the records, including the journal of proceedings of the Authority.

(2) That the following is a true and correct copy of a vote as finally adopted at a meeting of the Authority held on June 24, 1993 and duly recorded in this office:

Copies of a memorandum dated June 24, 1993 were distributed entitled "DEVONSHIRE TOWERS CHAPTER 121A PROJECT SECOND AMENDMENT TO REPORT AND DECISION" which included a proposed vote. Attached to said memorandum was a document entitled "SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF DEVONSHIRE TOWERS TRUST FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A AND CHAPTER 652 OF THE ACTS OF 1960, BOTH AS AMENDED ("CHAPTER 121A"), TO BE UNDERTAKEN AND CARRIED OUT BY A TRUST ORGANIZED PURSUANT TO MASSACHUSETTS GENERAL LAWS, AND APPROVED TO ACT AS AN URBAN REDEVELOPMENT TRUST UNDER SAID CHAPTER 121A" and an "Application for Second Amendment to Report and Decision" dated June 23, 1993.

Mr. Brian DeLorey, Assistant Director for Economic Development, addressed the Authority and answered the Members' questions.

On motion duly made and seconded, it was unanimously

VOTED: That the document presented at this meeting entitled "SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF DEVONSHIRE TOWERS TRUST FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A AND CHAPTER 652 OF THE ACTS OF 1960, BOTH AS AMENDED ("CHAPTER 121A"), TO BE UNDERTAKEN AND CARRIED OUT BY A TRUST ORGANIZED PURSUANT TO MASSACHUSETTS GENERAL LAWS, AND APPROVED TO ACT AS AN URBAN REDEVELOPMENT TRUST UNDER SAID CHAPTER 121A", be and hereby is approved and adopted.

The aforementioned "Second Amendment to the Report and Decision..." is incorporated in the Minutes of this meeting and filed in the Document Book of the Authority as Document No. 5582.

(3) That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Authority voted in a proper manner and all other requirements and proceeding under law incident to the proper adoption or the passage of said vote have been duly fulfilled, carried out and otherwise observed.

(4) That the document to which this certificate is attached is in substantially the form as that presented to said meeting.

(5) That if an impression of the seal has been affixed below, it constitutes the official seal of the Boston Redevelopment Authority, and this certificate is hereby executed under such official seal.

(6) That Paul L. Barrett is the Director of this Authority.

(7) That the undersigned is duly authorized to execute this certificate.

IN WITNESS WHEREOF, the undersigned hereunto has set his hand this Thirtieth day of June, 1993.

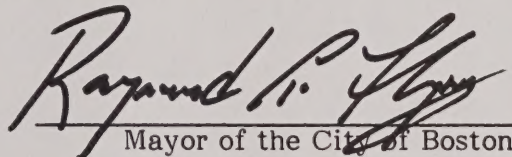
BOSTON REDEVELOPMENT AUTHORITY

By: Joseph J. Fisher
Secretary

LS

APPROVED:

Including, without limiting the generality of the foregoing, the "SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF DEVONSHIRE TOWERS TRUST FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A AND CHAPTER 652 OF THE ACTS OF 1960, BOTH AS AMENDED ("CHAPTER 121A"), TO BE UNDERTAKEN AND CARRIED OUT BY A TRUST ORGANIZED PURSUANT TO MASSACHUSETTS GENERAL LAWS, AND APPROVAL TO ACT AS AN URBAN REDEVELOPMENT TRUST UNDER SAID CHAPTER 121A"; the June 24, 1993 vote of the Authority approving the Second Amendment, and the permissions contained in said "SECOND AMENDMENT TO THE REPORT AND DECISION", for the Project to deviate from zoning regulations and ordinances in effect in the City of Boston.

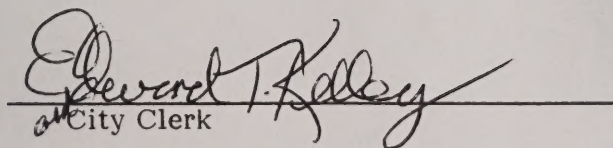


Mayor of the City of Boston

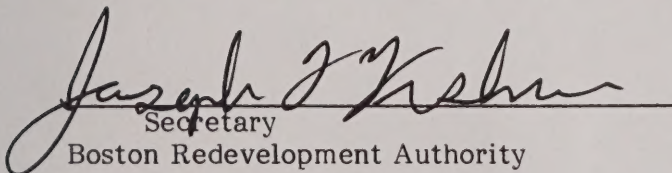


Date

ATTEST:



City Clerk



Secretary
Boston Redevelopment Authority

BOSTON REDEVELOPMENT AUTHORITY

SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF DEVONSHIRE TOWERS TRUST FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A AND CHAPTER 652 OF THE ACTS OF 1960, BOTH AS AMENDED ("CHAPTER 121A"), TO BE UNDERTAKEN AND CARRIED OUT BY A TRUST ORGANIZED PURSUANT TO MASSACHUSETTS GENERAL LAWS, AND APPROVAL TO ACT AS AN URBAN REDEVELOPMENT TRUST UNDER SAID CHAPTER 121A.

A. Prior Proceedings and Actions. Reference is made to the following:

1. On November 1, 1979, the Boston Redevelopment Authority (the "Authority") voted to adopt a Report and Decision (the "Report and Decision") on a project known as Devonshire Towers. Such vote was approved by the Mayor of the City of Boston (the "Mayor") on May 1, 1980 and the vote as approved was filed with the Clerk of the City of Boston (the "City Clerk") on May 2, 1980. The "Project", as more particularly described in the Report and Decision, consists of a 41 story residential apartment and office complex to be built on a parcel between Washington and Devonshire Streets in downtown Boston. The complex contained 478 residential apartments on 32 floors; 92,000 square feet of office space on 5 floors; 10,000 square feet of retail space on the ground level; and 3 levels of below grade parking, 242 spaces, for building tenants. Devonshire Towers Trust, a Massachusetts business trust (the "Devonshire Trust"), was approved in the Report and Decision as the Urban Redevelopment Trust to own, operate and manage the Project. The Trustees of the Devonshire Trust were and are: Harvey E. Rothenberg, Laurence Ruben and Alvin Schragis. The beneficiary of the Trust is Devonshire Associates, a Massachusetts limited partnership.

2. On November 14, 1980, a certain Regulatory Agreement, as required by Chapter 121A, Section 18C and the Report and Decision, was entered into by and between Devonshire Trust and the Authority (the "Regulatory Agreement").

3. On November 14, 1980, a certain Contract Required by Section 6A of Chapter 121A, was entered into by and between Devonshire Trust and the City of Boston.

4. On March 7, 1985, the Authority voted to adopt a First Amendment to the Report and Decision on the Project (the "First Amendment"). Such vote was approved by the Mayor on June 5, 1985 and the vote as approved was filed with the City Clerk on June 6, 1985. The First Amendment authorized a project change that involved the construction and use of a 3 level building addition within the existing open passageway off-street loading area between Washington and Devonshire Streets.

Hereinafter, the Report and Decision and the First Amendment shall be collectively referred to as the Amended Report and Decision.

B. Application for Second Amendment. As of June 23, 1993, Herbert Gleason, Esq., Kearney & Gleason, on behalf of the Devonshire Trust, filed with the Authority a certain letter application (the "Second Amendment Application") requesting that the Authority approve a take-out restaurant use on the Project's ground floor level and grant an additional "zoning deviation" therefor. Such use is a conditional use under Article 8-7, Table A, Use Item 36A, of the Boston Zoning Code requiring a conditional use permit under Article 6. The Second Amendment Application is incorporated herein by reference.

C. Regulatory Agreement and Authority's Power to Grant Zoning Code Deviations. Section 17 of the Regulatory Agreement provides in relevant part as follows:

"All changes, deviations, alterations or additions in the Project are subject to complete review and approval by the Authority..."

Acts of 1960, Chapter 652, Section 13, as amended, ninth paragraph, provides in relevant part with emphasis added as follows:

"In the construction and use of a project, such...[the Chapter 121A entity]...shall not deviate from any zoning...law, code, ordinance or regulation in effect in Boston; provided however, that notwithstanding the provisions of any such law, code, ordinance or regulation, the authority with the approval of the mayor of Boston shall have exclusive power, both before and after the approval of a project, to grant from time to time permission for the project to deviate from such law, code, ordinance or regulation if it finds that such permission may be granted without substantially derogating from the intent and purpose of such law, code, ordinance or regulation..."

The plans for the proposed take-out restaurant (the "Plans") have been submitted to and approved by the Authority's Design Review staff.

D. Authority Action. In acting hereunder, the Authority has considered the Second Amendment Application itself, all documents and exhibits filed therewith or referred to therein and all other testimony, information and material provided by the Devonshire Trust and others sufficient to enable it to act hereunder.

E. Decision. The Authority hereby acts as follows:

1. Description of Project. The Authority hereby ratifies and/or confirms the description of the Project to be as follows: (a) a 41 story residential apartment and office complex; (b) 3 levels of below grade parking with approximately 242 spaces for building tenants; (c) ground floor level with approximately 10,000 square feet of retail space; (d) a 3 level building addition within the passageway and off-street loading area on the ground level, with 2 levels for storage facilities, off-street loading and a maintenance shop and level 3 for management offices; (e) on floors 2 through 6,

approximately 92,000 square feet of office space; and on the upper 32 floors, 478 residential apartments. If there should be any conflict between the foregoing description and the description contained in the Amended Report and Decision, the foregoing description shall apply and govern.

2. Approval of Plans. In accordance with Section 17 of the Regulatory Agreement, the Authority hereby approves the Plans submitted on behalf of Devonshire Trust for a take-out restaurant to be located within the retail space on the ground level of Washington Street, specifically the area adjacent to the southerly side of the passageway to Devonshire Street.

3. Additional Zoning Code Deviation. In addition to those zoning code deviations previously granted by the Authority in the Report and Decision, Section J, the Authority, for the reasons set forth in the Second Amendment Application and the evidence presented, hereby finds that the deviation from Article 8-7, Table A, Use Item 36A, of the Boston Zoning Code, requiring a conditional use permit for a take-out restaurant at the location identified above in Subsection E.2., is necessary for the carrying out of the Project and is therefore granted, and the Authority finds that such permission may be granted without substantially derogating from the intent and purposes of applicable laws, codes, ordinances or regulations, including but not limited to, the Boston Zoning Code. The Authority further determines that, with the granting of such deviation, the use of the Project, specifically the identified retail space, will not be in contravention of any applicable provisions of the Boston Zoning Code, or rules, regulations and standards previously imposed on the Project by the Authority. In connection with this deviation, the Authority's Director may impose such terms and conditions on the approved use to minimize littering and the effect of such use on pedestrian and traffic flow, as he shall determine in his sole discretion.

4. Payment In-Lieu of Taxes. The Authority hereby requires the Project's owner, or its successors and assigns, to make a payment in-lieu of tax covering the period from the date of project termination under Chapter 121A to the date the property which constitutes the Project becomes fully taxable under General Laws, Chapter 59, as amended, and other applicable statutory provisions.

5. Rules and Regulations. Notwithstanding any minimum standard for financing, construction, maintenance and management or any other rules or regulations set forth or referenced in the Amended Report and Decision or the Regulatory Agreement to the contrary, the Authority hereby imposes as an additional rule and regulation that prior to the Devonshire Trust or any lessee filing for a building permit for the take-out use referenced in Subsections E. 2. and 3., the Devonshire Trust shall enter into an amendment to the Regulatory Agreement with the Authority, the terms and conditions of which must be acceptable to the Authority's Director.

6. Amended Report and Decision. All provisions of the Amended Report and Decision not specifically amended or revised by, or in conflict with this Second Amendment, shall remain in full force and effect.

F. Estoppel Certificates. The Authority's Director is authorized to provide to governmental bodies, including but not limited to, the City of Boston's Inspectional Services Department, lenders and other interested parties, Estoppel Certificates or like instruments, at his discretion, confirming matters covered by this Second Amendment.

G. Severability. In the event any provision of this Second Amendment shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

June 23, 1993

By Hand

Joseph F. Fisher, Executive Director/Secretary
Boston Redevelopment Authority
One City Hall Square, 7th Floor
Boston, MA 02201
Attn: Susan Hanson, Assistant Secretary

Re: Devonshire Towers Chapter 131A Project
Application for Second Amendment to Report and Decision

Dear Mr. Fisher:

On behalf of the Devonshire Towers Trust (the "Applicant"), this letter is to serve as an application (the "Application") to the Boston Redevelopment Authority (the "Authority") for a Second Amendment to the Report and Decision on the Devonshire Towers Chapter 131A Project. The original Report and Decision was previously approved by the Authority on November 1, 1979 and the First Amendment was approved on March 7, 1983. The Applicant hereby requests that the Report and Decision be amended further to change the Project by approving the location of a take-out restaurant to be operated by the Coffee Connection under a lease with the Applicant on the ground floor of the Washington Street elevation adjacent to the passageway to Devonshire Street. A take-out restaurant is a conditional use under Article 8-7, Table A, Use Item 36A, of the Boston Zoning Code, requiring a conditional use permit. Accordingly, the Applicant further requests approval of the plans for the proposed take-out restaurant (the "Plans"), which Plans have been submitted to and approved by the Authority's Design Review staff, and the granting of a "zoning deviation", i.e. a deviation from the conditional use requirement of Use Item 36A, in accordance with the St. 1960, c. 533, § 13, as amended.

This important retail space on Washington Street is now vacant. Potential retail uses for this small space are limited. Experience has shown that high quality coffee and bakery services are popular with pedestrians and enliven the street scene. The Applicant agrees to implement and maintain adequate safeguards

KEARNEY & GLEASON

BOSTON REDEVELOPMENT
AUTHORITY

PROFESSIONAL CORPORATION

ONE STATE STREET
BOSTON, MASSACHUSETTS 02109-2507

TELEPHONE (617) 529-0800

FACSIMILE (617) 529-0881

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June 23, 1993

By Hand

Joseph F. Fisher, Executive Director/Secretary
Boston Redevelopment Authority
One City Hall Square, 9th Floor
Boston, MA 02201
Attn: Susan Hannon, Assistant Secretary

Re: Devonshire Towers Chapter 121A Project
Application for Second Amendment to Report and Decision

Dear Mr. Fisher:

On behalf of the Devonshire Towers Trust (the "Applicant"), this letter is to serve as an application (the "Application") to the Boston Redevelopment Authority (the "Authority") for a Second Amendment to the Report and Decision on the Devonshire Towers Chapter 121A Project. The original Report and Decision was previously approved by the Authority on November 1, 1979 and the First Amendment was approved on March 7, 1985. The Applicant hereby requests that the Report and Decision be amended further to change the Project by approving the location of a take-out restaurant to be operated by the Coffee Connection under a lease with the Applicant on the ground floor of the Washington Street elevation adjacent to the passageway to Devonshire Street. A take-out restaurant is a conditional use under Article 8-7, Table A, Use Item 36A, of the Boston Zoning Code, requiring a conditional use permit. Accordingly, the Applicant further requests approval of the plans for the proposed take-out restaurant (the "Plans"), which Plans have been submitted to and approved by the Authority's Design Review staff, and the granting of a "zoning deviation", i.e. a deviation from the conditional use requirement of Use Item 36A, in accordance with the St. 1960, c. 652, § 13, as amended.

This important retail space on Washington Street is now vacant. Potential retail uses for this small space are limited. Experience has shown that high quality coffee and bakery services are popular with pedestrians and enliven the street scape. The Applicant agrees to implement and maintain adequate safeguards

Mr. Joseph F. Fisher
June 23, 1993
Page 2

against littering and to minimize any impact on pedestrian and vehicular flow on Washington Street.

The Plans for the take-out restaurant as previously submitted to the Authority's Design Review staff are incorporated herein by reference. The Applicant agrees to provide any supplementary materials to support this Application as may be requested.

Very truly yours,

KEARNEY & GLEASON
Professional Corporation

By: Herbert P. Gleason ^(r) *ATW*
Herbert P. Gleason

HPG/ajw

cc: Anthony Coleman
Harvey Rothenberg

